

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
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CHAMBERS OF
COLLEEN McMAHON
UNITED STATES DISTRICT JUDGE

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TO ALL COUNSEL IN: Schindler v. Otis (06 Civ. 5377 (CM)(THK))

FROM: Judge McMahon 

RE: Markman Briefing for "Control Device"

DATE: Nov. 21, 2010

Counsel:

I am back to work on your ever-fascinating case.

Before I do something silly, I want to be sure I am understanding your positions correctly. Each of you has characterized your dispute differently. Plaintiffs say that you differ over whether a "device" (i.e., the control device) can be made up of more than one component, or is limited to just one component. (Pl. Br. at 1) Otis says that this is not what is in dispute: rather, what is in dispute is whether any particular component can be part of both the "control device" and one of the other separate and distinct elements in the patented system (the recognition device or the storage device). (Def. Br. at 7).

So here are my questions (which are really directed to Otis):

1. Does Otis concede that the "control device" (or for that matter any other "device" as that term is used in the '094 patent) could have more than one component part? Or is the "control device" limited to a single thing (one device?). For my purposes, a computer is a single thing, although it is made up of lots of parts. I am using the phrase "component part" as Schindler uses it, which is to say, the DEC is a component and the dispatcher is a component – even though both the DEC and the dispatcher are made up of many different parts.
2. If the dispute is as Otis says, then I understand it to argue that the DEC is part of some other element in the patented system: either the recognition device or the

storage device. So of which one is it a part? I haven't gone back through all the old papers: did Otis originally take what was then Schindler's position, which is that the DEC is part of the recognition device (as it certainly was Schindler's)? Did some on behalf of Otis give testimony to that effect at an earlier point in the lawsuit? Does Otis take that position today? On what basis? (I am sure I knew the answer to this question two years ago, but the effort it will take for me to reeducate myself is better expended by lobbing the question to you)

Otis' counsel should send me a letter answering my questions. I do not see that this calls for a response from Schindler, because I am pretty sure that I understand Schindler's position.

Thank you for your help. I do look forward to trying this case next year.